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20 **UNITED STATES DISTRICT COURT**

21 **DISTRICT OF NEVADA**

22 TONKAWA TRIBE OF INDIANS OF OKLAHOMA
23 d/b/a TONKAWA ENTERPRISES; COW CREEK
24 BAND OF UMPQUA TRIBE OF INDIANS; and
25 UMPQUA INDIAN DEVELOPMENT
26 CORPORATION, on behalf of themselves and others
similarly situated,

27 Case No. 2:20-cv-01637-JCM-BNW

28 **DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS'
SECOND AMENDED
COMPLAINT OR, IN THE
ALTERNATIVE, COMPEL
ARBITRATION OR TRANSFER**

30 Plaintiffs,

32 v.

34 SCIENTIFIC GAMES CORPORATION, a Nevada
35 corporation; BALLY TECHNOLOGIES, INC., a
36 Nevada corporation; and BALLY GAMING, INC., a
37 Nevada corporation,

39 Defendants.

1 Plaintiffs Scientific Games Corporation, Bally Technologies, Inc. and Bally Gaming, Inc.
 2 (collectively, “Defendants”), by and through their undersigned counsel, hereby submit the
 3 following Motion to Dismiss Plaintiffs’ Second Amended Complaint or, in the Alternative,
 4 Compel Arbitration or Transfer. This Motion is made and based upon the following memorandum
 5 of points and authorities, all exhibits attached hereto, all pleadings and papers on file herein, and any
 6 oral argument the Court shall allow at the time of hearing.

7 **I. PRELIMINARY STATEMENT**

8 Defendants manufacture automatic card shufflers, which they sell and lease to casinos.
 9 Owing to the superior design of their patented inventions, they have enjoyed strong demand for
 10 their products. However, in this late-filed putative class action brought by two of Defendants’
 11 customers, Plaintiffs claim that Defendants obtained two patents in 2003 and 2009 by lying to the
 12 U.S. Patent and Trademark Office (the “PTO”) and sought to enforce those patents in sham
 13 litigations filed between 2003 and 2012. Defendants move to dismiss Plaintiffs’ antitrust action
 14 because it is untimely under the four-year limitations period that applies to Sherman Act claims,
 15 or alternatively, to compel Plaintiffs to arbitrate their claims as both Plaintiffs’ agreements with
 16 the Defendants contain mandatory arbitration provisions that cover the asserted claims.

17 First, Plaintiffs’ claims are plainly time barred and should be dismissed. Not only do the
 18 actions giving rise to Plaintiffs’ claims date back to 2003 to 2012, but they have also been the
 19 subject of other widely-publicized antitrust litigation as early as 2015. In April 2015, an ostensible
 20 competitor named Shuffle Tech sued Defendants raising claims that Plaintiffs argue are “closely
 21 related” to their own. Second Amended Complaint ¶ 1. The case was tried to verdict in August
 22 2018, the parties subsequently settled, and the verdict was vacated in December 2018. In March
 23 2019, other competitors, TCS John Huxley and Taiwan Fulgent, brought a similar suit—less than
 24 two months before the four-year anniversary of the filing of the *Shuffle Tech* complaint—arguing
 25 that they did not discover their alleged injuries until they were told by their litigation counsel of
 26 the facts giving rise to their antitrust injury in a March 2019 meeting.

1 In this case, Plaintiffs plead ignorance for even longer. They assert that they did not know,
2 and could not have known, of the facts they allege until ***June and September of this year.***
3 According to Plaintiffs, at no time in the nine years between 2003 and 2012, when the underlying
4 conduct allegedly occurred, could they have known these facts. Not when they were paying
5 allegedly supracompetitive prices in 2009 and onward. Not even when Shuffle Tech publicly filed
6 its complaint in federal court in early 2015 advancing allegations that Plaintiffs say are “closely
7 related” to their own. Not until more than midway through this year, nearly two decades after the
8 first patent issued, when their antitrust counsel first thought to mention the seventeen years of
9 litigation to them.

10 Plaintiffs’ allegations strain credibility to the point of implausibility, and their case must
11 be dismissed. Sherman Act claims are subject to a four-year limitations period. Under the law in
12 this Circuit, *Walker Process* (fraud on the PTO) antitrust claims accrue when the patent is issued,
13 and sham litigation claims accrue when the sham lawsuit is filed. The Complaint alleges that the
14 last supposedly sham lawsuit was filed in 2012 and the last disputed patent was issued before then.
15 Second Amended Complaint ¶ 27. This means that Plaintiffs’ claims are at least ***four years stale***
16 and should be dismissed as time-barred.

17 In the alternative, Defendants request this Court compel Plaintiffs to arbitrate their claims.
18 In the Tonkawa Tribe’s Master Agreement with Defendant Bally Gaming, Inc. (now named SG
19 Gaming, Inc.), through which it leases the Defendants’ automatic card shufflers, Plaintiff Tonkawa
20 Tribe agreed to submit “any and all controversies, disputes, or claims of any nature arising directly
21 or indirectly out of or in connection with this Agreement” to arbitration. Similarly, in its License
22 and Lease Agreement with Defendant Bally Gaming, Inc., Plaintiff Umpqua Indian Development
23 Corporation (a corporation of Plaintiff Cow Creek Band of Umpqua Tribe of Indians) agreed to
24 arbitrate “any and all controversies, disputes, or claims of any nature arising directly or indirectly
25 out of or in connection with this Agreement.” The Plaintiffs’ claims are based on their lease of
26
27

1 automatic shufflers pursuant to those agreements. Accordingly, Defendants move to compel
2 Plaintiffs to arbitrate their claims.

3 Finally, if this Court declines to dismiss Plaintiffs' complaint or compel them to arbitration,
4 the case should be transferred to the Northern District of Illinois, as plaintiffs who filed competing
5 putative class actions in that district have requested. Another competitor's case and two putative
6 class actions are now pending there and witnesses are located in Illinois. ECF No. 5, *2. If this
7 case is not dismissed outright, as it should be, or compelled to arbitration, Defendants join in the
8 competing plaintiffs' request that it be transferred to the Northern District of Illinois, where those
9 related actions are pending.

10 **II. STATEMENT OF FACTS**

11 **A. Defendants Manufacture And Sell Automatic Card Shufflers That Incorporate
12 Their Patent Technology; Plaintiffs Are Customers.**

13 Defendants sell and lease games, gaming products, and gaming services to casinos and
14 other game and lottery customers. Using the brand "Shuffle Master" or "SHFL," they are the
15 market leader in the manufacture of automatic card shufflers used in casinos worldwide. Since
16 innovating and producing the first marketable automatic shufflers in the early 1990s, Defendants
17 have been leaders in innovation and technological development, and hold a robust intellectual
18 property portfolio with over 2,500 worldwide patents, trademarks, and copyrights granted and
19 pending.

20 Plaintiffs are customers who own and operate casinos, plus a third related entity. The
21 Tonkawa Tribe of Oklahoma owns and operates two casinos in Oklahoma; the Cow Creek Band
22 of Umpqua Tribe owns and operates a casino in Oregon; and the Umpqua Indian Development
23 Corporation "is a Section 17 corporation of the Plaintiff Cow Creek Band of Umpqua Tribe of
24 Indians." (ECF No. 19, Second Amended Complaint ¶¶ 5–7.) Plaintiffs allege that they have

1 purchased automatic shufflers for over a decade.¹ (ECF No. 19, *2 (“The Three Casinos Choosing
 2 Nevada Have Substantial and Continuing Alleged Damages for Over a Decade”).)

3 **B. Between 2003 And 2012, Defendants Or Their Predecessors Filed Several Cases To
 4 Successfully Protect Their Intellectual Property.**

5 Plaintiffs make various allegations regarding certain of the Defendants’ patents. They
 6 allege that Defendants obtained two patents by fraud: the ‘982 patent and the ‘935 patent. Second
 7 Amended Complaint ¶ 18. The Complaint alleges that the ‘982 patent was issued in November
 8 2003 based on an application filed in 2002 (¶ 18), that the ‘935 patent was issued in April 2009
 9 based on an application filed in 2003 (¶ 45), and that reexamination proceedings for both ended in
 10 summer 2015 (¶ 24). In other words, any supposed fraud on the PTO occurred between five and
 11 eighteen years ago.

12 The Complaint also discusses several lawsuits that Defendants and their predecessors filed
 13 between 2003 and 2012 to assert their patent rights:

- 14 • A counterclaim filed on August 25, 2003, after CARD (a casino products
 supplier who sought to sell a competing shuffler) filed a declaratory
 judgment action on May 6, 2003. Second Amended Complaint ¶ 25. The
 lawsuit resulted in a settlement. *Id.* ¶ 26.
- 15 • A suit filed on October 5, 2004 against non-party VendingData (a shuffler
 manufacturer) resulting in a grant of summary judgment in VendingData’s
 favor. *Id.* ¶ 50.
- 16 • A suit filed on November 11, 2009 against non-party Taiwan Fulgent
 (another shuffler manufacturer) resulting in Taiwan Fulgent agreeing not to
 enter the U.S. market for three years. *Id.* ¶ 50.
- 17 • A suit filed on September 14, 2012 against TCS John Huxley (a casino
 product distributor who was in business with Taiwan Fulgent) resulting in
 TCS’s agreement not to show the A Plus shuffler at an upcoming trade show

22
 23 ¹ The Second Amended Complaint alleges purchases since at least September 2016. (¶¶ 5-7.) This
 24 date appears a holdover from the Complaint and First Amended Complaint, which both alleged a
 25 damages period that was limited to September 2016 to present (*i.e.*, four years prior to suit).
 26 Complaint ¶ 54; First Amended Complaint ¶ 58. The Second Amended Complaint alleges a
 27 damages period from April 2009 to present. Second Amended Complaint ¶ 64. However, to the
 28 extent the Court concludes that this portion of the pleading is ambiguous and more specific
 information is needed regarding when Plaintiffs purchased or leased shufflers, Defendants move
 for a more definitive statement pursuant to Rule 12(e). *See* Fed. R. Civ. Proc. 12(e).

1 and not to represent it was selling the A Plus shuffler in the U.S. market.
 2 *Id.* ¶ 50.

- 3 • A suit filed on October 12, 2012 against DigiDeal (a shuffler manufacturer)
 4 in this Court. *Id.* ¶ 27.

5 As this list makes clear, the most recent allegedly sham suit was filed over eight years ago, in
 6 October 2012.²

7 **C. In 2015, A Competitor Named Shuffle Tech Filed A Highly-Publicized Antitrust
 8 Suit Against Defendants.**

9 Not only did the underlying conduct occur outside of the limitations period, but it has also
 10 been the subject of at least two prior and highly-publicized antitrust cases raising what Plaintiffs
 11 argue are “closely related” allegations. Second Amended Complaint, ¶ 1. In 2015, DigiDeal’s
 12 business partner Shuffle Tech (who had not been party to the 2012 DigiDeal case) filed an antitrust
 13 lawsuit alleging that Defendants obtained their patents by committing fraud on the PTO and that
 14 they enforced the patents through sham litigation, the same patent suits on which Plaintiffs rely.
 15 Second Amended Complaint ¶ 25; *Shuffle Tech, et al. v. Scientific Games Corp.*, No. 15-cv-3702
 16 (N.D. Ill.) (“*Shuffle Tech*”); compare Second Amended Complaint ¶ 50 with Complaint, *Shuffle
 17 Tech Int’l. LLC v. Scientific Games Corp.*, No. 1:15-cv-03702, ECF No. 1 ¶ 58 (N.D. Ill. Apr. 28,
 18 2015). The case, which was regularly reported on by media publications and disclosed in
 19 Defendants’ securities filings, Ex. A, was tried to verdict and settled before appeal. See *Shuffle
 20 Tech Int’l. LLC, et al. v. Scientific Games Corp., et al.*, No. 1:15-cv-3702, ECF No. 335 (N.D. Ill.
 21 Dec. 24, 2018) (“The judgment based on the jury verdict in this case . . . and the minute order
 22 entering the jury verdict . . . are hereby vacated and stricken and shall have no further force and
 23 effect.”). Another competitor, distributor TCS John Huxley, which had previously been sued by
 24 Defendants, filed a substantially similar case in Illinois in 2019; that case remains pending. See

25
 26 ² Plaintiffs also cite SHFL’s 2018 filing of a proposed Proof of Claim in DigiDeal’s bankruptcy.
 27 Second Amended Complaint ¶ 32. But, as discussed below, this has no bearing on the statute of
 28 limitations calculation. See *infra*, note 5.

1 *TCS John Huxley America, Inc., et al. v. Scientific Games Corp.*, No. 19 C 1846, 2020 WL
 2 1678258 (N.D. Ill. Mar. 20, 2020).

3 **D. Various National Media Extensively Covered The Prior Claims And Underlying
 4 Allegations.**

5 At least as far back as 2002, various national media were reporting that a competitor had
 6 accused Defendants of lying to the PTO.³ Dow Jones Newswire's coverage noted that
 7 VendingData "asserts counterclaims against Shuffle Master for breach of contract, violation of the
 8 Uniform Trade Secrets Act, conversion, ***breach of duty of candor to the U.S. Patent and***
 9 ***Trademark Office and fraud.***" *VendingData Denies It Infringed On Shuffle Master Patent*, Dow
 10 Jones Newswires, May 7, 2002 (emphasis added). Ex. B. In 2005, Bloomberg Law reported that
 11 VendingData "intends to pursue its remedies against Shuffle Master, Inc. ***arising from its***
 12 ***wrongful use of the judicial system to impede competition*** in the market for automatic card
 13 shuffler and dealing machines." *Federal Circuit Court of Appeals Grants VendingData*
 14 *Corporation's Appeal and Vacates Preliminary Injunction Order*, Bloomberg Law, Dec. 28, 2005
 15 (emphasis added). Ex. C.

16 Both Law360 and Bloomberg Law extensively covered the *Shuffle Tech* litigation
 17 throughout 2015. *See, e.g., Card Shuffler Co. Deals \$100M Monopoly Suit To Rival*, Law360,
 18 April 28, 2015 (Shuffle Tech alleges Scientific Games "illegally monopolized the market for
 19 shuffling machines used in casinos by filing sham patent lawsuits against rival manufacturers"
 20 asserting "a family of fraudulently obtained patents"); *Scientific Games Says Standing Sinks*
 21 *\$100M Antitrust Suit*, Law360, June 29, 2015 ("Shuffle Tech also cited four [of Defendants'] suits
 22 similar to the DigiDeal case in its complaint, dating to the early 2000s."); *Plaintiffs Defend \$100M*

23
 24 ³ This Court may take judicial notice of news articles in ruling on a motion to dismiss. *See* F.R.E.
 25 201; *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010)
 26 (taking judicial notice of newspapers to affirm dismissal of complaint on grounds that plaintiff was
 27 on constructive notice of her claims). *See also Benak ex rel. All. Premier Growth Fund v. All.*
Capital Mgmt. L.P., 435 F.3d 396, 401 (3d Cir. 2006) (affirming dismissal of complaint based on
 28 judicial notice of newspaper articles that put plaintiff on inquiry notice of securities fraud).

1 *Card Shuffler Antitrust Suit*, Law360, July 20, 2015; *Bally Faces Monopoly Suit On Casino Card*
 2 *Shufflers*, Bloomberg Law, Oct. 13, 2015 (court “held that Shuffle Tech stated a so-called *Walker-*
 3 *Process [sic]* claim for monopolization under the Sherman Act for sham patent litigation.”). Exs.
 4 D, E, F, G.

5 **E. Plaintiffs Allege Their Case Pleads Allegations “Closely Related” To Those In
 6 *Shuffle Tech*—But More Than Four Years Later.**

7 On September 3, 2020, Plaintiffs filed their “direct purchaser” putative class action against
 8 Defendants. They allege in the first paragraph of their Complaint that “[t]his matter is closely
 9 related to an action brought against Defendants by their competitors,” the 2015 *Shuffle Tech* case.
 10 Second Amended Complaint, ¶ 1. Two other customer plaintiffs who filed a similar action in the
 11 Northern District of Illinois based on what they claim are the same allegations have moved to have
 12 this case transferred there, and likewise argue that this case is “closely related” to *Shuffle Tech*,
 13 TCS, and their own putative class action. ECF No. 5, *2; see also *Giuliano v. Scientific Games*
 14 Corp., Case No. 1:20-cv-05262 (N.D. Ill.).

15 **F. Plaintiffs Agreed To Arbitrate Their Claims.**

16 Long before this suit began, each of the Plaintiffs agreed to arbitrate their claims against
 17 Defendants. Those arbitration agreements clearly cover the claims at issue here.

18 On November 20, 2013, Plaintiff Tonkawa Tribe entered into a “Master Agreement” with
 19 Defendant Bally Gaming, Inc. to lease equipment, including automatic shufflers (the “Master
 20 Agreement”). Ex. H.⁴ That agreement provided that it “shall govern the purchase and
 21 lease/participation of Bally equipment,” and applied to subsequent lease agreements. Ex. H at *1.

22
 23
 24 ⁴ Each agreement contains a clause binding each party to “hold in confidence any information
 25 supplied to it by the other and designated in writing as confidential.” Ex. H, Term 2; Ex. I, Term
 26 2. Defendants intend to consult with Plaintiffs about the filing of a Protective Order in this case.
 27 But until one is entered, out of an abundance of caution to avoid disclosing confidential
 28 information, Defendants have redacted the agreements except for the relevant arbitration clauses.

1 In the Master Agreement, Plaintiff Tonkawa Tribe agreed to arbitrate all claims related to its lease
2 of automatic shufflers. Specifically, Term 8.2 of the Master Agreement provides:

3 8.2 *Submission of Disputes to Binding Arbitration.* The parties agree that any
4 and all controversies, disputes or claims of any nature arising directly or indirectly
5 out of or in connection with this Agreement (including *without limitation* claims
6 relating to the validity, performance, breach, and/or termination of this Agreement)
7 shall be submitted to binding arbitration for final resolution. The arbitration shall
follow the Commercial Arbitration Rules of the American Arbitration Association
("AAA") or other mutually agreed-upon procedures and shall be conducted in a
mutually agreeable location.

8 Ex. H at Term 8.2. The parties further agreed that either could bring an action in federal court to
9 compel arbitration:

10 8.3 *Enforcement/Compelling Arbitration.* The parties agree that enforcement
11 of any arbitration award, as well as any action to permit or compel arbitration, may
12 be brought in federal or state court. If either federal or state court decline
jurisdiction, then such action may be brought in Tribal Court. With respect to any
13 action to review or enforce any arbitration award, the parties agree that the
standards and provisions of the Federal Arbitration Act shall apply.

14 *Id.* at Term 8.3.

15 The other Plaintiffs, the Cow Creek Band of Umpqua Tribe and the Indian Development
16 Corporation, also agreed to arbitrate their claims. On March 30, 2015, the Umpqua Development
17 Corporation and Bally Gaming, Inc. entered into an agreement for the Umpqua Development
18 Corporation to lease shufflers from Bally (the "Lease Agreement"). Ex. I. In that Lease
19 Agreement, the parties agreed to arbitrate all disputes related to the lease of the automatic shufflers.
20 Terms 6.6(a) and 6.6(b) in the Lease Agreement are identical to Terms 8.2 and 8.3 in the Master
21 Agreement between Bally and the Tonkawa Tribe. *Id.* at Term 6.6.

23 **III. ARGUMENT**

24 "To survive a motion to dismiss, a complaint must contain sufficient factual matter,
25 accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S.
26 662, 678 (2009) (internal quotations omitted). In analyzing a complaint, courts accept factual
27

1 allegations but disregard legal conclusions. “Threadbare recitals of the elements of a cause of
 2 action, supported by mere conclusory statements, do not suffice.” *Id.* “A statute-of-limitations
 3 defense, if apparent from the face of the complaint, may properly be raised in a motion to dismiss.”
 4 *Seven Arts Filmed Entm’t Ltd. v. Content Media Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013)
 5 (internal quotations omitted). That is the case here.

6 **A. Plaintiffs’ Claims Are Barred By The Sherman Act’s Four-Year Statute of
 7 Limitations.**

8 Under the Sherman Act, antitrust actions are barred “unless commenced within four years
 9 after the cause of action accrued.” 15 U.S.C. § 15b. It is clear from the face of this Complaint that
 10 Plaintiffs’ claims accrued more than four years before the Complaint was filed. Therefore, the
 11 case should be dismissed.

12 **1. Plaintiffs’ claims accrued more than four years before suit.**

13 An antitrust cause of action accrues when a defendant commits the act that causes the
 14 alleged injury. *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th Cir. 1987) (“The
 15 initiation of a lawsuit is the final, immutable act of enforcement.”). For claims that the defendant
 16 procured its patent by fraud (*Walker Process* claims), that period begins to run when the patent is
 17 issued. *Westlake Servs., LLC v. Credit Acceptance Corp.*, No. CV1507490SJOMRWX, 2017 WL
 18 8948263, at *3 (C.D. Cal. Dec. 28, 2017) (“For antitrust actions allegedly involving patent fraud,
 19 the four-year statute of limitations generally begins running when the allegedly fraudulently
 20 procured patent [is] issued”). For claims alleging the defendant filed anticompetitive litigation to
 21 clear the market of competitors (sham litigation claims), the period begins to run when the alleged
 22 sham complaint was filed or served. *Pace Indus., Inc.*, 813 F.2d at 238; *see also Al George, Inc.*
 23 *v. Envirotech Corp.*, 939 F.2d 1271, 1275 (5th Cir. 1991); Areeda & Hovenkamp, Antitrust Law:
 24 An Analysis of Antitrust Principles and Their Application, ¶ 320.

25 Here, Plaintiffs allege that the relevant patents were issued on or before October 2012.
 26 Second Amended Complaint ¶¶ 18, 45. Therefore, Plaintiffs’ *Walker Process* claim accrued no
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1 later than October 2012 and the four-year statutory period expired no later than October 2016. *See,*
 2 *e.g.*, *Westlake Servs., LLC*, 2017 WL 8948263 at *3. By the time Plaintiffs filed their complaint
 3 in September 2020, their claims were more than four years late.

4 Plaintiffs also assert injury based on alleged sham lawsuits that Defendants filed from 2003
 5 to 2012. Second Amended Complaint ¶ 50. Courts in the Ninth Circuit have held that the
 6 limitations period runs from the date the sham lawsuit is *filed* or *served*, and that the prosecution
 7 of the already-commenced litigation does not extend the antitrust plaintiff's time to sue. *See Pace*
 8 *Indus., Inc.*, 813 F.2d at 237 ("last overt act was allegedly anticompetitive filing of state court
 9 action on restrictive covenant, not subsequent prosecution of suit"); *Westlake Servs., LLC*, 2017
 10 WL 8948263 at *5 ("[t]he initiation of a lawsuit is the final, immutable act of enforcement of an
 11 allegedly illegal contract that constitutes an overt act for the purposes of the continuing violation
 12 doctrine"). Thus, the last date on which Plaintiffs' sham litigation claim could have accrued was
 13 October 2012, when the last allegedly sham litigation was filed,⁵ meaning that the limitations
 14 period likewise expired in October 2016. Again, Plaintiffs are at least four years late.

15

16 ⁵ Plaintiffs cite SHFL's 2018 filing of a proposed Proof of Claim in DigiDeal's bankruptcy.
 17 Second Amended Complaint ¶ 32. But that was not a new claim. The proposed Proof of Claim
 18 requested only the right to pursue litigation that SHFL had filed against the debtor (DigiDeal) **in**
19 2012 and collect any judgment. *In re Digideal Corp.*, No. 17-00449-FPC1, ECF No. 423 at *1.
 ECF No. 424 at *17 (Bankr. E.D. Wash. Jun 13, 2018). For statute of limitations purposes, it is
 21 well established that the filing of a proof of claim is not the equivalent of the commencement of a
 22 civil case. *Easley v. Pettibone Michigan Corp.*, 990 F.2d 905, 912 (6th Cir. 1993) (rejecting
 23 argument that filing a bankruptcy claim constituted commencement of an action and thus tolled
 24 the statute of limitations, noting "[t]here are significant differences between a bankruptcy claim
 25 and a civil complaint"); *Linders v. MN Airlines, LLC*, 2006 WL 167611 at *2 (E.D. Mo.) (a
 bankruptcy claim is not an action that tolls the limitations period); *Grimmett v. Brown*, 75 F.3d
 506, 513–14 (9th Cir. 1996) (false bankruptcy filing is not an independent act for statute of
 limitations in a RICO claim); cf. *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1413 (2017)
 (filing a bankruptcy claim that is facially barred by the statute of limitations is not an FDCPA
 violation because "the context of a civil suit differs significantly from . . . [a] bankruptcy
 proceeding").

26 In any event, the motion that Plaintiffs cite was not even a proof of claim—it was a motion seeking
 27 leave to extend the bar date to file a late proof of claim. *Id.* ECF No. 423 at *7. In an ironic twist,

1 **2. Neither the discovery rule, fraudulent concealment, nor the continuing
2 violation doctrine can save Plaintiffs' claims.**

3 Implicitly acknowledging that *something* is required to resuscitate their long-dead claims,
4 Plaintiffs attempt to invoke the discovery rule, which provides that a claim does not accrue until
5 “the plaintiff knows or has reason to know of the injury which is the basis of the action.” *Trotter*
6 *v. Int'l Longshoremen's & Warehousemen's Union, Local 13*, 704 F.2d 1141, 1143 (9th Cir. 1983);
7 see Second Amended Complaint ¶¶ 58–62. But the Ninth Circuit does not apply the discovery
8 rule to antitrust claims. *See In re Animation Workers Antitrust Litig.*, 87 F. Supp. 3d 1195, 1208–
9 11 (N.D. Cal. 2015) (collecting cases from this Circuit and others). In this Circuit, courts apply
10 the injury rule instead, holding that an antitrust cause of action accrues when the plaintiff is injured.
11 *Id.* The Ninth Circuit has been clear: “We do not require a plaintiff to actually discover its antitrust
12 claims before the statute of limitations begins to run.” *Hexcel Corp. v. Ineos Polymers, Inc.*, 681
13 F.3d 1055, 1060 (9th Cir. 2012).

14 Plaintiffs fare no better under a fraudulent concealment theory. Under that doctrine, “a
15 statute of limitations may be tolled if the defendant fraudulently concealed the existence of a cause
16 of action in such a way that the plaintiff, acting as a reasonable person, did not know of its
17 existence.” *Hexcel Corp.*, 681 F.3d at 1060. Plaintiff bears “the burden of pleading and proving
18 fraudulent concealment.” *Id.* (quoting *Conmar Corp. v. Mitsui & Co. (U.S.A.), Inc.*, 858 F.2d 499,
19 502 (9th Cir. 1988)). A plaintiff must plead, with particularity, specific facts showing both that
20 the defendant “affirmatively misled it” and that the plaintiff “had **neither actual nor constructive**
21 **knowledge** of the facts giving rise to its claim **despite its diligence** in trying to uncover those facts.”
22 *Id.* (internal quotations omitted) (emphases added); *see also* Fed. R. Civ. P. 9(b); *Ryan v. Microsoft*
23 *Corp.*, 147 F. Supp. 3d 868, 885–86 (N.D. Cal. 2015). Plaintiffs have not met that burden.

24
25
26 DigiDeal and Shuffle Tech both opposed, arguing that SHFL’s proposed proof of claim was
27 untimely. *Id.* ECF No. 430 at *1, ECF No. 433 at *2.

1 First, Plaintiffs have not pled an affirmative act of concealment. They refer generally to
 2 “Defendants’ fraudulent patent concealment before the United States PTO” and “the concealed,
 3 sham nature of their litigations[.]” Second Amended Complaint ¶ 58. But that is not enough. The
 4 Ninth Circuit has rejected the suggestion that an underlying violation is “self-concealing,” and
 5 instead requires proof that the plaintiff’s lack of notice “was the result of affirmative conduct by
 6 the defendant.” *Conmar Corp.*, 858 F.2d at 505. Plaintiffs have not pled any such affirmative
 7 conduct by the Defendants.

8 Second, Plaintiffs cannot plausibly allege that they did not know, and should not have
 9 known, of their injury until now. A plaintiff cannot avail itself of a tolling theory unless it was
 10 diligent in investigating its claims. *See Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 194–95 (1997)
 11 (citing Areeda & Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and Their
 12 Application, ¶ 338 (rev. ed. 1995)). If “the plaintiff should have been alerted to facts that,
 13 following duly diligent inquiry, could have advised it of its claim,” then fraudulent concealment
 14 does not apply. *Hexcel Corp.*, 681 F.3d at 1060.

15 These allegations have been public for far too long, and in too many prior cases, for
 16 Plaintiffs to plausibly allege that they could not have discovered their claims until now. In fact, in
 17 Plaintiffs’ own telling, their case is “closely related” to one publicly filed in federal court **more**
 18 **than five years ago**. Second Amended Complaint ¶ 1; see also ECF No. 19, *2. They also argue
 19 that their case is “related to” SHFL’s 2012 case against DigiDeal, which was litigated for nearly
 20 four years before the court granted summary judgment on a “similar claim” involving “the same
 21 event, alleged sham litigation,” “similar questions of fact,” and “the same patents.” ECF No. 19,
 22 *3.

23 Allegations that Defendants committed fraud on the PTO or are monopolists have been
 24 raised in prior cases (including the 2015 *Shuffle Tech* litigation) and reported in the press for years.⁶
 25 *See, e.g., VendingData Denies It Infringed On Shuffle Master Patent*, Dow Jones Newswires, May

26 ⁶ This Court may take judicial notice of these news articles. See *supra* note 4.
 27

1 7, 2002; *Federal Circuit Court of Appeals Grants VendingData Corporation's Appeal and Vacates*
 2 *Preliminary Injunction Order*, Bloomberg Law, Dec. 28, 2005; *Card Shuffler Co. Deals \$100M*
 3 *Monopoly Suit To Rival*, Law360, April 28, 2015; *Scientific Games Says Standing Sinks \$100M*
 4 *Antitrust Suit*, Law360, June 29, 2015; *Plaintiffs Defend \$100M Card Shuffler Antitrust Suit*,
 5 Law360, July 20, 2015; *Bally Faces Monopoly Suit On Casino Card Shufflers*, Bloomberg Law,
 6 Oct. 13, 2015. Exs. B, C, D, E, F, G. These tired claims are as baseless today as they were then.

7 Any attempt to invoke the continuing violation doctrine would likewise fail, as the theory
 8 has been squarely rejected in this context. Under the continuing violation doctrine, a new overt
 9 act by the defendant may restart the four-year clock only if the new act meets two criteria: “1) It
 10 must be a new and independent act that is not merely a reaffirmation of a previous act; and 2) it
 11 must inflict new and accumulating injury on the plaintiff.” *Pace Indus., Inc.*, 813 F.2d at 238.

12 It is well established that continued sales at an allegedly supracOMPETITIVE price do not
 13 trigger the accrual of new causes of action. The limitations period “is not extended by continued
 14 sales at an allegedly monopolistic price because the ‘monopolist’s simple charging of its profit-
 15 maximizing price is a naturally expected consequence of a monopoly and can hardly be said to be
 16 [an] independent [act].”⁷ *Kaiser Found. v. Abbott Labs.*, No. CV02-2443-JFWFMOX, 2009 WL
 17 3877513, at *7 (C.D. Cal. Oct. 8, 2009) (quoting II Areeda & Hovenkamp, Antitrust Law, ¶ 320c4,
 18 at 298-99 (3d ed. 2007)); *Oliver v. 3D-3C, LLC*, No. C 11-01260 JSW, 2012 WL 1835740, at *3

20 ⁷ The rule is different for price fixing cases. In a price fixing conspiracy, each time a co-conspirator
 21 charges the agreed-upon price, it engages in a new and independent act that inflicts new and
 22 accumulating injury on the plaintiff. See *Pace Indus.*, 813 F.2d at 238. Each time it sells at the
 23 fixed price, it in essence agrees again to continue conspiring with its rivals. See *In re California*
Bail Bond Antitrust Litig., No. 19-CV-00717-JST, 2020 WL 3041316, at *19 (N.D. Cal. Apr. 13,
 24 2020) (emphasis added) (“each time a defendant sells its *price-fixed* product, the sale constitutes a
 25 new overt act causing injury to the purchaser and the statute of limitations runs from the date of
 26 the act”). In contrast, for a *Walker Process* or sham litigation claim, the illegal act is obtaining the
 27 patent by fraud or filing baseless lawsuits to crowd out rivals. *Pace Indus.*, 813 F.2d at 237;
Westlake Servs., LLC, 2017 WL 8948263, at *3. Thereafter, continuing to sell at allegedly
 supracOMPETITIVE prices is the naturally expected consequence of the defendant’s earlier actions
 and thus is not a continuing violation. See Areeda & Hovenkamp, Antitrust Law: An Analysis of
 Antitrust Principles and Their Application, ¶ 320 (3d ed. 2007).

1 (N.D. Cal. May 21, 2012), *rev'd and remanded on other grounds*, *Oliver v. SD-3C LLC*, 751 F.3d
2 1081 (9th Cir. 2014) ("[t]he statute of limitation runs from the time of commission of the act,
3 notwithstanding that high prices may last indefinitely into the future"); *see also Midwestern Mach.
4 Co. v. Nw. Airlines, Inc.*, 392 F.3d 265, 269–70 (8th Cir. 2004); *Z Techs. Corp. v. Lubrizol Corp.*,
5 753 F.3d 594, 600 (6th Cir. 2014).

3. Plaintiffs' attempt to plead estoppel cannot save their claims either.

7 Plaintiffs make one more attempt to save their claims by pleading that the 2018 “*Shuffle*
8 *Tech* judgment establishes in part that Defendants had monopolized the relevant market,”
9 possessed monopoly power, and harmed consumers. Second Amended Complaint ¶ 63. This fails
10 for two reasons.

First, there is simply no support for the proposition that a judgment in *another plaintiff's* case does anything to restart the limitations period. In fact, there is ample support for the opposite conclusion: the existence of prior related litigation can confirm that the limitations period already ran. *See, e.g., Molecular Diagnostics Labs. v. Hoffmann-La Roche Inc.*, 402 F. Supp. 2d 276, 284 (D.D.C. 2005) (because the case was similar to a 1999 case, the plaintiffs were on notice of their claims in 1999); *Med. Mut. of Ohio, Inc. v. Braintree Labs.*, No. CIV. 10-604-SLR, 2011 WL 2708818, at *4 (D. Del. July 12, 2011) (“a plethora of information evaluated by the court in connection with the [prior] litigation—for example, the ‘183 patent and its prosecution history—was publicly available prior to the court’s 2008 opinion.”).

20 Plaintiffs' bare allegation that the 2018 judgment in the 2015 *Shuffle Tech* case "establishes
21 *in part*" Defendants' violation and Plaintiffs' injury does not change anything. Second Amended
22 Complaint ¶ 63 (emphasis added). Plaintiffs' alleged injury occurred, and thus the limitations
23 period began to run, years before the judgment. *See, e.g., Pace Indus*, 813 F.2d at 238; *Al George,*
24 *Inc.*, 939 F.2d at 1275. Creative pleading and half-truths cannot change reality.

1 Second, the 2018 *Shuffle Tech* judgment was vacated, as Plaintiffs admit in their
 2 Complaint. Second Amended Complaint ¶ 51. Thus, even if the 2018 judgment once had an effect
 3 on the limitations period (and it did not), it no longer does.

4 **B. In The Alternative, Plaintiffs' Claims Must Be Arbitrated.**

5 If Plaintiffs' claims are not dismissed in their entirety—which, for the reasons noted above,
 6 they should be—then the Court should compel Plaintiffs to arbitrate. The Federal Arbitration Act
 7 (“FAA”) governs arbitrability. 9 U.S.C. § 1 *et seq.* The controlling section of that act, section 3,
 8 provides:

9 If any suit or proceeding be brought in any of the courts of the United States upon
 10 any issue referable to arbitration under an agreement in writing for such arbitration,
 11 the court in which such suit is pending, upon being satisfied that the issue involved
 12 in such suit or proceeding is referable to arbitration under such an agreement, shall
 13 on application of one of the parties stay the trial of the action until such arbitration
 14 has been had in accordance with the terms of the agreement, providing the applicant
 15 for the stay is not in default in proceeding with such arbitration.

16 9 U.S.C. § 3. Thus, the FAA requires a district court to compel arbitration if the matter at issue is
 17 within the scope of an applicable arbitration agreement. 9 U.S.C. §§ 3–4.

18 The FAA permits a party to a valid arbitration agreement to ask the Court to compel
 19 arbitration, so long as the court has jurisdiction over the underlying dispute. 9 U.S.C. § 4; *Vaden*
 20 *v. Discover Bank*, 556 U.S. 49, 50 (2009). This Court has federal-question subject-matter
 21 jurisdiction over Plaintiffs’ antitrust claims, as pled in Plaintiffs’ Second Amended Complaint. 28
 22 U.S.C. § 1331; Second Amended Complaint ¶ 6. Therefore, this Court has jurisdiction to compel
 23 Plaintiffs to arbitrate. *See Vaden*, 556 U.S. at 70.

24 Arbitration must be compelled where (1) a valid, enforceable agreement to arbitrate exists
 25 and (2) the claims at issue fall within the scope of that agreement. *See Shearson/American Express,*
Inc. v. McMahon, 482 U.S. 220, 226 (1987). An arbitration agreement governed by the FAA is
 26 presumptively valid and enforceable. *See Mitsubishi Motors Corp. v. Solver Chrysler-Plymouth,*
Inc., 473 U.S. 614, 626-27 (1985). The Supreme Court has instructed that “any doubts concerning

1 the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Memorial*
 2 *Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983).

3 Here, (1) the Court should compel Plaintiffs to arbitrate because they are subject to a
 4 binding arbitration agreement that applies to their claims and (2) arbitration cannot be class-wide
 5 because Defendants did not (and do not) agree to class arbitration.

6 **1. Plaintiffs are bound by their agreement to arbitrate their antitrust claims.**

7 Here, there plainly is a valid and enforceable agreement to arbitrate. Plaintiffs’ agreements
 8 included broad arbitration clauses that cover any dispute “arising directly or indirectly out of or in
 9 connection with this Agreement.” Ex. H Term 8.2; Ex. I Term 6.6(a). That clause clearly covers
 10 Plaintiffs’ claims, which arise out of their lease of shufflers pursuant to these agreements for
 11 allegedly inflated prices. Second Amended Complaint ¶¶ 5–7. Therefore, this Court should
 12 compel arbitration and stay this action. *See* 9 U.S.C. § 3; *Sullivan v. Gen. Steel Domestic Sales*,
 13 No. 307CV00604LRHRAM, 2008 WL 2414045, at *7 (D. Nev. June 11, 2008) (staying an action
 14 and compelling arbitration under arbitration clause).

15 Nor is there any doubt that the claims at issue in this case should be arbitrated. Courts have
 16 squarely held that antitrust claims are arbitrable. *Gilmer v. Interstate/Johnson Lane Corp.*, 500
 17 U.S. 20, 28 (1991) (“The Sherman Act, the Securities Exchange Act of 1934, RICO, and the
 18 Securities Act of 1933 all are designed to advance important public policies, but, as noted above,
 19 claims under those statutes are appropriate for arbitration.”); *Nghiem v. NEC Elec., Inc.*, 25 F.3d
 20 1437, 1441–42 (9th Cir. 1994); *In re Apple & AT & TM Antitrust Litig.*, 826 F. Supp. 2d 1168,
 21 1175 (N.D. Cal. 2011). The Ninth Circuit has held that where, as here, the arbitration clause
 22 extends to “disputes arising in connection” with an agreement, the language is “interpreted
 23 liberally.” *See, Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720-21 (9th Cir. 1999) (“the language
 24 ‘arising in connection with’ reaches every dispute between the parties having a significant
 25 relationship to the contract and all disputes having their origin or genesis in the contract.”).
 26 Because Plaintiffs’ claims arise out of leases with Defendants, and because those claims are
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1 arbitrable under the agreements' arbitration clauses and applicable law, this Court must compel
2 Plaintiffs to arbitrate. 9 U.S.C. §§ 3–4.

2. Plaintiffs' claims cannot be arbitrated on a class-wide basis.

4 The arbitration clauses in the Master Agreement and Lease Agreement do not contain
5 agreements to arbitrate on a class-wide basis. *See* Ex. H Term 8.2; Ex. I Term 6.6(a). Accordingly,
6 class-wide arbitration is not permitted.

In *Lamps Plus v. Varela*, the Supreme Court held that class arbitration is unavailable if the contract is silent or ambiguous on the issue. 139 S. Ct. 1407, 1419 (2019). The arbitration clause at issue in that case did not refer to class proceedings. *Id.* at 1413. The Ninth Circuit had held that this “ambiguity” allowed class arbitration. *Id.* On appeal, the Supreme Court explicitly rejected that interpretation: “We [] face the question whether, consistent with the FAA, an ambiguous agreement can provide the necessary ‘contractual basis’ for compelling class arbitration. . . . We hold that it cannot.” *Id.* at 1415 (quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 684 (2010)).

The *Lamps Plus* Court explained that there is a “fundamental difference” between class arbitration and traditional individualized, bilateral arbitration. *Id.* at 1416. The Court held that under the FAA, the “default rule” is *against* class arbitration, and the FAA “requires more” to overcome this default. *Id.* at 1417, 1419. That is because “class arbitration sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011).

Whether a party can bring its claim as a class arbitration is a threshold issue of arbitrability that a court must decide. *Shivkov v. Artex Risk Sols., Inc.*, 974 F.3d 1051, 1065–66 (9th Cir. 2020); see also *Reed Elsevier, Inc. v. Crockett*, 734 F.3d 594, 599 (6th Cir. 2013) (holding that a reference to the AAA Commercial Rules of Arbitration does not delegate class arbitrability to the arbitrator); *Chesapeake Appalachia, LLC v. Court Petroleum, LLC*, 809 F.3d 746, 761 (3d Cir. 2016) (same).

1 *Catamaran Corp. v. Towncrest Pharmacy*, 864 F.3d 966, 973 (8th Cir. 2017) (same). In ruling on
 2 a motion to compel arbitration, a court may therefore direct that the arbitration shall be on an
 3 individual basis rather than class-wide. *Yu v. Volt Info. Scis., Inc.*, 2019 WL 3503111, at *7 (N.D.
 4 Cal. Aug. 1, 2019) (compelling individual, non-class arbitration).

5 Here, the Defendants did not agree to arbitrate on a class-wide basis. The Lease
 6 Agreements do not provide for class arbitration. *See* Ex. H Term 8.2; Ex. I Term 6.6(a). Therefore,
 7 if the case is not dismissed outright, this Court must compel each Plaintiff to arbitrate its antitrust
 8 claims on an individual basis. *Lamps Plus*, 139 S. Ct. at 1419; 9 U.S.C. §§ 3-4.

9 **C. In the Alternative, This Case Should Be Transferred to the Northern District of
 10 Illinois.**

11 If the Court declines to dismiss Plaintiff's Complaint, and declines to compel arbitration,
 12 then it should transfer the case to the Northern District of Illinois. As with the discussion of the
 13 limitations period, this analysis turns on the fact that this case is (in Plaintiffs' words) "closely
 14 related" to cases in the Northern District of Illinois. Second Amended Complaint ¶ 1. In fact, two
 15 customer plaintiffs who filed competing putative class actions in that district have moved to
 16 transfer this case there, advancing the same argument. ECF No. 5. Accordingly, if the case is not
 17 dismissed in its entirety on limitations grounds, or sent to arbitration, then Defendants support the
 18 motion to transfer. Here, there are two independent and sufficient bases for transfer: 28 U.S.C.
 19 § 1404 and the "first-to-file" rule.

20 First, Section 1404 allows this Court to transfer this case to "any civil district where it
 21 might have been brought" if doing so is "in the interests of justice." 28 U.S.C. § 1404. If the
 22 transferee court has personal jurisdiction over the defendants, the decision to transfer is in the
 23 discretion of this Court, and "thus calls on the district court to weigh in the balance a number of
 24 case-specific factors" in its "individualized, case-by-case determination." *Stewart Org., Inc. v.
 25 Ricoh Corp.*, 487 U.S. 22, 29 (1988) (internal quotations omitted). These factors may include "(1)
 26 the location where the relevant agreements were negotiated and executed, (2) the state that is most
 27

1 familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof." *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000).

6 Here, Defendants are subject to personal jurisdiction in the Northern District of Illinois, as
 7 they have sold and leased card shufflers within that District, including to members of Plaintiffs'
 8 proposed class. See 15 U.S.C. § 22; *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d
 9 1174, 1180 (9th Cir. 2004) ("In a statute providing for nationwide service of process, the inquiry
 10 to determine minimum contacts is thus whether the defendant has acted within any district of the
 11 United States or sufficiently caused foreseeable consequences in this country.").

12 The analysis thus turns to the discretionary factors. The sixth (costs of litigation), seventh
 13 (availability of compulsory process), and eighth (ease of access to sources of proof) *Jones* factors
 14 weigh in favor of transfer. As Plaintiffs point out in their Complaint, the "closely related" *Shuffle*
 15 *Tech* case was litigated in the Northern District of Illinois. Second Amended Complaint ¶ 1. There
 16 are now **three** additional closely related cases pending in the Northern District of Illinois that each
 17 rely on substantially the same factual allegations, and one of those cases has been pending for more
 18 than 18 months. ECF No. 5. "It is 'well established that the existence of a related action pending
 19 in the transferee court weighs heavily towards transfer.'" *Shull v. Univ. of Queensland*, No.
 20 218CV01781APGBNW, 2019 WL 4392520, at *1 (D. Nev. Sept. 12, 2019) (quoting *JetBlue*
 21 *Airways Corp. v. Helperich Patent Licensing, LLC*, 960 F. Supp. 2d 383, 400-01 (E.D.N.Y. 2013)).
 22 Transferring to the Northern District of Illinois would reduce all parties' litigation costs as it would
 23 facilitate streamlined discovery between all plaintiffs and Defendants (if any of the cases proceed
 24 to merits discovery). Transfer would also ease Plaintiffs' access to sources of proof in coordination
 25 with the other consumer plaintiffs in that District.

1 The first (where the agreements were negotiated and executed) and fourth (the parties' contacts with the forum) factors also weigh in favor of transfer. Plaintiffs are located out of district, in Oklahoma and Oregon. Second Amended Complaint ¶¶ 5-7.

4 The remaining *Jones* factors should be given little weight. The second factor (governing
5 law) carries no weight where, as here, the sole claims are under federal law. *See, e.g., Earth Island*
6 *Inst. v. Quinn*, 56 F. Supp. 3d 1110, 1117 (N.D. Cal. 2014) (“since the action involves federal law,
7 neither district is more ‘familiar with the governing law.’”). The third (plaintiff’s choice of forum)
8 and fifth (contacts relating to cause of action in the forum) are of little relevance in a putative
9 nationwide class action where the plaintiffs do not reside in the forum. *See, e.g., In re Galectin*
10 *Therapeutics, Inc. Sec. Litig.*, 2015 WL 260881, at *4 (D. Nev. Jan. 21, 2015) (“when an individual
11 brings a derivative suit or represents a class, the named plaintiff’s choice of forum is given less
12 weight.”); *Perez v. Performance Food Grp., Inc.*, 2017 WL 66874, at *3 (N.D. Cal. Jan. 6, 2017)
13 (“Plaintiff’s choice of forum is entitled little deference because he has brought a class action, does
14 not reside in the Northern District . . . and did not suffer any of the alleged violations here.”); *Park*
15 *v. Dole Fresh Vegetables, Inc.*, 964 F. Supp. 2d 1088, 1094 (N.D. Cal. 2013) (case transferred
16 because plaintiffs did not reside in the forum and sued on behalf of a putative class).

17 Critically, Plaintiffs’ admission that they are engaging in forum shopping in a mistaken
18 belief that Ninth Circuit law will be more favorable for their estoppel theory (ECF No. 31, *6–9)
19 renders their forum choice irrelevant and strongly favors transfer. *See, e.g., Williams v. Bowman*,
20 157 F. Supp. 2d 1103, 1106 (N.D. Cal. 2001) (“If there is any indication that [a] plaintiff’s choice
21 of forum is the result of forum shopping, [the] plaintiff’s choice will be accorded little deference.”);
22 *Cadenasso v. Metro. Life Ins. Co.*, 2014 WL 1510853, at *5 (N.D. Cal. Apr. 15, 2014) (transferring
23 case because of plaintiff’s forum shopping).

24 Second, the “first-to-file” rule is an independent and sufficient basis to transfer. It can be
25 applied when there are two “cases involving the same parties and issues have been filed in two
26 different districts.” *Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 769 (9th Cir. 1997). “The

1 second district court has discretion to transfer, stay, or dismiss the second case in the interest of
2 efficiency and judicial economy.” *Id.* The decision to apply the rule is within the district court’s
3 discretion, but there are three relevant factors: “chronology of the lawsuits, similarity of the parties,
4 and similarity of the issues.” *Kohn Law Grp., Inc. v. Auto Parts Mfg. Mississippi, Inc.*, 787 F.3d
5 1237, 1240 (9th Cir. 2015).

6 In this case, all three factors favor transfer. The ongoing *TCS* litigation was filed in 2018,
7 and the plaintiffs in that case claim that *TCS* is based in part on the 2015 *Shuffle Tech* case that is
8 “closely related” to these Plaintiffs’ claims. Second Amended Complaint ¶ 1; ECF No. 5, *5. The
9 defendants are all identical and the plaintiffs are “substantial[ly] similar[.].” *Kohn*, 787 F.3d at
10 1240. Furthermore, as Plaintiffs and interveners have pointed out to this Court, the legal issues
11 are substantially identical: the alleged fraudulent obtainment and enforcement of disputed patents.
12 ECF No. 5, *6; Second Amended Complaint ¶ 51. Thus, if any of the cases proceed to merits
13 discovery (which they should not), they can and should be heard in Illinois.

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IV. CONCLUSION

Defendants respectfully request that Plaintiffs' Second Amended Complaint be dismissed with prejudice. In the alternative, Defendants request that the Court compel arbitration on an individual basis for each Plaintiff. Lastly, if the Court neither dismisses the case nor compels arbitration, then Defendants request that this Court transfer this case to the Northern District of Illinois.

Dated: November 19, 2020

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing **Motion to Dismiss Plaintiffs' Second Amended Complaint or, in the Alternative, Compel Arbitration or Transfer** was served on the 19th day of November, 2020 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Philip R. Erwin
An employee of Campbell & Williams

INDEX OF EXHIBITS

Exhibit	Description	Pages
A	Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Scientific Games Corporation)	001-056
B	Dow Jones Article <i>VendingData Denies It Infringed On Shuffle Master Patent</i> dated May 7, 2002	057-058
C	Bloomberg Law Article <i>Federal Circuit Court of Appeals Grants VendingData (TM)</i> dated December 26, 2005	059-061
D	Law 360 Article <i>Card Shuffler Co. Deals \$100M Monopoly Suit to Rival</i> dated April 28, 2015	062-064
E	Law 360 Article <i>Scientific Games Says Standing Sinks \$100M Antitrust Suit</i> dated June 29, 2015	065-066
F	Law 360 Article <i>Plaintiffs Defend \$100M Card Shuffler Antitrust Suit</i> dated July 20, 2015	067-069
G	Bloomberg Law Article <i>Bally Faces Monopoly Suit on Casino Card Shufflers</i> dated October 13, 2015	070-071
H	Master Agreement between Bally Gaming, Inc. and Tonkawa Tribe of Indians of Oklahoma dated November 20, 2013	072-084
I	License and Lease Agreement between Bally Gaming, Inc. and Umpqua Indian Development Corp. dated March 20, 2015	085-092